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1944

File No. Prize Comp. II
44

Legal Department

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Subject:— Rules and Notifications under the Bombay Prize Competition Tax Act, 1939

E

page 2

1944

File No. Prize Comp. II/44

Gen. 194 e.

184-B

Office of the R.L.A.

The draft notification at page 103, as amended, is in order.

2. Para. 2 of U.S., R.D.'s note on page 101:- The view taken by the Under Secretary that no prosecution under section 294A of the Indian Penal Code would be successful in such cases is correct. That section applies only to these kinds of lotteries in which there is acutal physical drawing of ~~xkx.~~ lots.

It is stated in this paragraph that there is also trouble from people printing certain bogus lottery tickets without even taking out a license. It appears from the concluding portion marked 'A' on p. 98 in the last para. of the Collector's letter that it is not a mere matter of printing but also of publishing and conducting schemes with distribution on prizes to holders of pre-selected or post-selected numbers. If so, the question whether each of these schemes would or would not be a prize competition within the meaning of section 2(2) of the Bombay Prize Competition Tax Act, 1939 (Bom. XI of 1939), would be a question of fact. The definition of 'prize competition' in section 2(2) is very wide and inclusive. As observed by the Advocate General in his opinion No. 17, dated the 19th April 1940 two persons, who contribute and receive receipts in such a scheme may be said to be endeavouring or striving to obtain the first prize. It includes the types of prize competitions enumerated in clause (a), competitions in which prizes are offered for forecasts of the results of events not know in clause (b) and then in clause (c) ~~xx~~ any other competition success inwhich does not depend to a substantial degree uponn the exercise of skill. If, therefore, the Collector is satisfied and can prove by

evidence that any of these competitions does not depend to a substantial degree upon the exercise of skill, and so is a prize competition within the meaning of clause (c) of the defintion, the promotor of such prize competition would be liable to a penalty under section 6 for contravention of section 4, for failure to take out a license in respect of such competition.

3. Para. 3 of U.S., R.D.'s note on p. 101: In the circumstances mentioned by the U.S., namely where the bidi shop proprietor sells any such tickets on a misrepresentation that they are lottery tickets (vide on p. 2 slip F) and when the buyer asks what else he has to do, the vendor says nothing, the shopkeeper can be prosecuted for cheating under section 420 of the Indian Penal Code.

Id/- P.N.M.
8/2/44.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1061, dated the 9th February 1944.

EVY. 6/7.

3. As pointed out in R.L.A's opinion No. 247-Confl., dated the 8th May 1941 lotteries are also prize competitions within the meaning of section 2(2) (a) of the Bombay Prize Competition Tax Act, 1939, and ₹ Phadke who sold the tickets of the lottery in question would be liable to be prosecuted under section 6 for selling lottery tickets without a license. (See para. 2 of R.L.A's opinion No. 3097, dated the 9th May 1942 and No. 5220, dated the 25th June 1942).

Id/- P.N.M.
28/6/44.

Remembrancer of Legal Affairs.

U.R. to M.D. No. 4580, dated the 29th June 1944.

EVY. 6/7.

Office of the R.L.A.K

It appears that in this case a scheme of lottery bearing the name of 'Santa Teresa' was promoted in Kolhapur by some persons who are residents of Portuguse India (Goa). One Uttam Dharma Phadke sold the tickets relating to the scheme in Karwar. The ticket on the face of it does not state that the prize, if any due to the number of ticket will be paid not indicates if the ticket is in respect of any lottery at all. The District Superintendent of Police's letter at page 5 states that Phadke published in Karwar a proposal to pay the sum drawn by the ticket. The question is whether Phadke can be prosecuted under para. 2 of section 294A of the Indian Penal Code and also under the Bombay Prize Competition Tax Act, 1939.

2. From the mere fact that Phadke published a proposal to pay the sum "drawn by the ticket", (the evidence as to which has not been seen by the R.L.A.) it is not possible to conclude that the present scheme is a lottery within the meaning of section 294A of the Indian Penal Code. If the prize numbers are not drawn by lot physically the scheme would not attract punishment under section 294A of the Indian Penal Code as a lottery. The ticket itself seems of little help in deciding this question. Assuming that the scheme is a lottery to be decided by the physical drawing of lots, it would appear from the facts stated that all the ingredients of the offence under para, 2 of section 294A of the Indian Penal Code, as explained in R.L.A's opinion No. 135-Confl., dated the 6th July 1936, are present in this case. Before however Phadke is prosecuted under para. 2 of section 294A for publishing the proposal for a lottery, it would be desirable to collect firmer evidence about the nature of the lottery (as to whether it involves physical drawing of lots), and about the publication made by Phadke.